

Impact of Changes to the “White Collar” Exemptions in the Federal Fair Labor Standards Act on Wisconsin Employers

On August 23rd, 2004 the U. S. Department of Labor [USDOL] will adopt changes to the Fair Labor Standards Act [FLSA] that will affect whether some employees are eligible to receive overtime premium pay for hours worked in excess of 40 hours per week and minimum wage under federal law. Wisconsin employers need to be aware that Wisconsin also has state minimum wage and overtime pay requirements affecting persons employed in Wisconsin. Wisconsin employers, with rare exceptions, are covered by both the federal FLSA and Wisconsin laws, and must comply with both.

While the FLSA contains a minimum wage exemption for outside salespersons, certain computer employees and salaried administrative, executive and professional employees who meet certain criteria, Wisconsin’s minimum wage law contains no similar exemption. A Wisconsin employer must pay **all of its employees** at least the state minimum wage for all hours worked.

The most significant change in the USDOL regulations concerns the overtime exemptions that apply to some salaried administrative, executive and professional employees. Wisconsin’s overtime regulations also contain exemptions for these types of employees. Up until August 23rd, 2004 Wisconsin’s salary overtime exemptions very closely paralleled the similar federal exemptions. With the adoption of the federal changes that will no longer be the case. In order for a Wisconsin employer to comply with both federal and state overtime regulations on the salary overtime exemptions, it will be necessary for the employer to ensure that they meet both sets of criteria for the exemption. Usually an employer may accomplish that by meeting the more stringent requirement of each law. The following chart outlines the criteria to qualify for the federal and state exemption in each category and points out the more stringent requirement.

Executive Exemption

State Rule	Federal Rule	Most Stringent
Monthly Salary of \$700	Weekly Salary of \$455	Federal rule
Primary duty of the management of the enterprise or a recognized department or subdivision.	Primary duty of the management of the enterprise or a recognized department or subdivision. In some instances the federal rule would allow someone whose <u>principal</u> duty was the management of the enterprise even though the person might not be primarily engaged as a manager or supervisor.	State rule
Customarily and regularly directs the work of two or more other employees.	Customarily and regularly directs the work of two or more other employees.	Same.

Has authority to hire or fire other employees (or recommendations as to fire, hire, promotion or other change of status of other employees are given particular weight).	Has authority to hire or fire other employees (or recommendations as to fire, hire, promotion or other changes of status of other employees are given particular weight).	Same
Customarily and regularly exercises discretionary powers.	Customarily and regularly exercises discretionary powers.	Same
Does not devote more than 20 percent (40% in retail or service establishments) of work time to activities that are not directly and closely related to exempt work.	Usually the position spends more than 50% of work time on exempt work but in some positions the exempt work may be their principal or most important duties but not account for 50% of their work time.	State

Administrative Employees

State Rule	Federal Rule	Most Stringent
Monthly Salary of \$700	Weekly Salary of \$455	Federal rule
Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or of the employer's customers.	Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or of the employer's customers.	Same
Customarily and regularly exercises discretion and independent judgment.	Customarily and regularly exercises discretion and independent judgment.	Same
Regularly and directly assists a proprietor, or exempt executive or exempt administrative employee OR Performs work along specialized or technical lines requiring special knowledge under only general supervision OR		Same

Executes special assignments under only general supervision		
Does not devote more than 20 percent (40% in retail or service establishments) of time to activities that are not directly and closely related exempt work.	With most positions will devote no more than 50% of time to activities not directly and closely related to the above duties. In some positions, however, the individual may spend more than 50% of their work time on other duties but their principal or most important duties will be those listed above.	State rule

Learned Professional Employee

State Rule	Federal Rule	Most Stringent
Monthly Salary of \$750	Weekly Salary of \$455	Federal rule
Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.	Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.	State rule
Consistently exercises discretion and judgement.	Includes work that requires the exercise of discretion and independent judgement.	State rule
Performs work that is predominantly intellectual and varied in character that the output produced or result accomplished cannot be standardized in relation to a given period of time.		State rule.
Does not devote more than 20% of time to activities that are not an essential part of and necessarily incident to exempt work.		State rule

Creative Professional Employee

State Rule	Federal Rule	Most Stringent
Monthly salary of \$750	Weekly salary of \$455	Federal rule
Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee.	Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.	Same
Consistently exercises discretion and judgment.		State rule
Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.		State rule
Does not devote more than 20% of time to activities that are not directly and closely related to exempt work.		State rule

Computer Employees

State Rule	Federal Rule	Most Stringent
Monthly salary of \$750 or hourly rate of \$27.63 or higher	Weekly salary of \$455 or paid \$27.63 or higher per hour	Federal rule
Primary duty of performing work requiring theoretical and practical application of highly specialized knowledge in computer systems analysis, programming, and software engineering.	Primary duty of (A) application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications; or (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including	Federal rule

	<p>prototypes, based on and related to user or system design specifications; or</p> <p>(C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or</p> <p>(D) a combination of the duties described in (A), (B) and (C), the performance of which requires the same level of skills.</p>	
Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.	Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.	Same
Consistently exercises discretion and judgment		State rule
Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.		State rule
Does not spend more than 20% of time to activities that are not directly and closely related to exempt work.		State rule

Outside Salesperson

State Rule	Federal Rule	Most Stringent
<p>Employed for the purpose of and customarily and regularly engaged away from the employer's place of business</p> <p>In making sales;</p> <p>or</p>	<p>Primary duty of making sales; or of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p>	State rule

In obtaining orders or contracts for services for the use of facilities for which a consideration will be paid by the client or customer.		
Spends at least 80% of time away from the employer's place of business.	Customarily and regularly engaged away from the employer's place or places of business.	State rule

If you have specific questions about the application of state overtime pay exemptions you may call our Madison office at (608) 266-6861.